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Legal Aspects of Commercial Letters of Credit (Book Review)

Louis S. Posner

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LEGAL ASPECTS OF COMMERCIAL LETTERS OF CREDIT. By Herman N. Finkelstein, Introduction by Karl N. Llewellyn. New York: Columbia University Press, 1930, pp. 390.

The courts, no less than the banker and the merchant, have come to realize, during the past decade, the paramount value of the Letter of Credit as an instrument of finance, particularly in international trade. This field of law has been long marked with incertitude, and the publication of Dr. Finkelstein's volume, setting forth the rules and principles applicable to the subject, against the background of its history and practice, is therefore all the more welcome. Cases from nearly all of the common law jurisdictions have been assembled and discussed in a finely critical and valiant effort to chart, and here and there to bridge, the path to uniformity.

Your reviewer is especially glad of the opportunity to say a word concerning this book, for he was permitted the privilege of observing it in the course of preparation, and of reading and of commenting upon it in manuscript. The practitioner will quickly recognize, as did this reviewer, Dr. Finkelstein's eminent qualifications for the task which he has set himself of recounting the history and development of the existing rules and principles applicable to the subject. Due acknowledgment should be made to the authorities of Columbia University under whose ægis the book is published.

On the historical side, the author not only traces the legal development of the rules of Letters of Credit in the courts, but gives a comprehensive narrative of the rise of this type of commercial paper from simple, primitive origins to its present common use and pre-eminence. In this connection, the early forms of Letters of Credit which are added to the appendices of the book show interestingly the distance we have traversed since this type of credit transaction first came into use.

The rest of the book, which consists of seven additional chapters (eight in all), gives a full account of the various rights that result from the issuance of Letters of Credit, the manner in which these rights are enforced, and finally, the theoretical background in which the courts have set their decisions. The detailed and careful analogies of the relation between the Letter of Credit and the sales contract are especially valuable, and we are in debt for the author's clarification, in Chapter Six, of the numerous problems which arise from the close interaction of the two instruments. The reader will accept, with a sense of growing confidence, the author's guidance through "the perplexing inter-relations of the Law of Credit and the Law of Sales," as Professor Llewellyn phrases it in his scholarly and adequate introduction to the book.

Throughout this chapter, as well as throughout the entire work, the author has borne in mind the special position of the bank as the issuer of Letters of Credit and demonstrates his grasp of the many problems that arise out of the fact that the business of issuing Letters of Credit is done so largely by banks—institutions greatly affected with the public interest.

To the practicing lawyer the last chapter may not seem of intrinsic importance in view of the fact that it deals with the theoretical background of the subject, but those who are familiar with the discussions on this subject will recall the zealous debates that have surrounded the effort to classify into definite groups and categories the decisions pertaining to Letters of Credit. Dr. Finkel-

stein acknowledges this difficulty at the very outset of his discussion, saying, "It would be futile, therefore, to expect to find expressed in the decisions any one well-recognized common law principle which has guided the various courts of many jurisdictions in deciding the questions that have arisen. And any attempt to do so would seem *a priori* to be doomed to failure." He is of the opinion that, "It is entirely unnecessary to formulate any one legal principle upon which the rights of a beneficiary under a commercial credit can be rested"; and, pointing out that the irrevocable Letter of Credit is, after all, a mercantile specialty which has slowly developed out of the necessities of commerce and which the common law has gradually come to recognize, the author concludes with the reassuring prognostication, "That the ability of the law to develop with the needs of commerce has not yet disappeared, and with the growing consciousness on the part of the courts of the true status of the commercial credit, its formal recognition as a mercantile specialty cannot long be delayed."

The volume is thoroughly authenticated, and it is safe to assume that no important citations have been omitted from the list of collected cases. The treatise is a significant contribution to the literature of the law. It should prove of great value to the practicing lawyer.

LOUIS S. POSNER.

New York City.